

Oct 28, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ISABEL ROCHA, JR,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

2:19-cv-185-SAB

**ORDER SUMMARILY
DISMISSING HABEAS ACTION**

BEFORE THE COURT is Petitioner's First Amended Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. ECF No. 10. Petitioner, a prisoner at the Coyote Ridge Corrections Center, is proceeding *pro se* and *in forma pauperis*. Respondent has not been served.

PROPER RESPONDENT

An initial defect with the amended petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d

1 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of
2 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

3 **EXHAUSTION REQUIREMENT**

4 Petitioner challenges his 2018 Grant County guilty pleas to first-degree rape
5 of a child and first-degree child molestation. He was sentenced on January 16, 2019,
6 to 120 months' incarceration. Petitioner provides no information regarding any
7 direct appeal. ECF No. 10 at 2.

8 In his grounds for relief, Petitioner argues that the State of Washington has no
9 jurisdiction to decide federal constitutional matters. ECF No. 10 at 5-12. It has long
10 been settled that state courts are competent to decide questions arising under the U.S.
11 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) ("It is the duty of the
12 state court, as much as it is that of the federal courts, when the question of the validity
13 of a state statute is necessarily involved, as being in alleged violation of any
14 provision of the federal constitution, to decide that question, and to hold the law void
15 if it violate that instrument."); *see also Worldwide Church of God v. McNair*, 805
16 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal
17 courts to decide federal constitutional matters). Therefore, Petitioner's arguments
18 to the contrary lack merit.

19 Additionally, before a federal court may grant habeas relief to a state prisoner,
20 the prisoner must exhaust the state court remedies available to him. 28 U.S.C.
21 § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
22 a prisoner give the state courts an opportunity to act on his claims before he presents
23 those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
24 petitioner has not exhausted a claim for relief so long as the petitioner has a right
25 under state law to raise the claim by available procedure. *See Id.*; 28 U.S.C.
26 § 2254(c).

27 To meet the exhaustion requirement, the petitioner must have "fairly
28 present[ed] his claim in each appropriate state court (including a state supreme court

1 with powers of discretionary review), thereby alerting that court to the federal nature
2 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
3 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
4 the factual or legal bases for that claim and by alerting the state court “to the fact
5 that the ... [petitioner is] asserting claims under the United States Constitution.”
6 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
7 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
8 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

9 Furthermore, to fairly present a claim, the petitioner “must give the state
10 courts one full opportunity to resolve any constitutional issues by invoking one
11 complete round of the State's established appellate review process.” *O'Sullivan*,
12 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
13 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
14 (1971). It appears from the face of the Petition and the attached documents that
15 Petitioner has not exhausted his state court remedies as to each of his grounds for
16 relief.

17 **GROUND FOR FEDERAL HABEAS RELIEF**

18 Petitioner asserts that the Washington state constitution contradicts the federal
19 constitution regarding the Fifth Amendment right to “presentment or indictment of
20 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
21 his arrest, conviction and imprisonment illegal.

22 Petitioner seems to argue that because the state courts have defied “federally
23 established procedures and processes for the adjudication of crimes” only “a court
24 of federal jurisdiction” has jurisdictional authority over his claims. His bald
25 assertion that “due process of the law was ignored” is unsupported by his factual
26 allegations.

27 As the U.S. Supreme Court stated long ago, “Prosecution by information
28 instead of by indictment is provided for by the laws of Washington. This is not a

1 violation of the Federal Constitution.” *See Gaines v. Washington*, 277 U.S. 81, 86
2 (1928). There is no federal constitutional violation when a prosecuting attorney’s
3 criminal information is substituted for the grand jury’s indictment. *See Hurtado v.*
4 *California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment is essential
5 to due process of law and that a state violates the Fourteenth Amendment by
6 prosecuting a defendant with a criminal information). Petitioner’s assertions to the
7 contrary presented in his four grounds for federal habeas corpus relief are legally
8 frivolous.

9 Because it plainly appears from the First Amended Petition and
10 accompanying documents that Petitioner is not entitled to relief in this Court, **IT IS**
11 **ORDERED** the First Amended Petition, ECF No. 10, is **DISMISSED** pursuant to
12 Rule 4, Rules Governing Section 2254 Cases in the United States District Courts.

13 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
14 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
15 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
16 taken in good faith, and there is no basis upon which to issue a certificate of
17 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
18 appealability is therefore **DENIED**.

19 **DATED** this 28th day of October 2019.



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A handwritten signature in blue ink, reading "Stanley A. Bastian".

25 Stanley A. Bastian
26 United States District Judge
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